

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DON WALKER,)
)
 Petitioner,)
)
 vs.) NO. CIV-10-1182-D
)
)
 ERIC FRANKLIN, Warden,)
)
 Respondent.)

ORDER

Petitioner, a state prisoner appearing *pro se*, brought this action for a writ of habeas corpus pursuant to 28 U.S.C. §2241. In accordance with 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Doyle W. Argo for initial proceedings.

Respondent filed a motion to dismiss based on Petitioner's failure to exhaust his state judicial remedies prior to filing this habeas action; Petitioner failed to respond to that motion. The Magistrate Judge then filed a Report and Recommendation [Doc. No. 9] in which he recommended that the Court grant the motion to dismiss because Petitioner has not shown that he exhausted his state remedies prior to filing this action¹.

In a Report and Recommendation, the Magistrate Judge advised Petitioner of his right to object to the Report and Recommendation, and scheduled a January 27, 2011 deadline for filing such objections. The Magistrate Judge also advised Petitioner that a failure to timely object would

¹ In the Report and Recommendation, the Magistrate Judge also noted that Department of Corrections records indicate Petitioner was discharged from custody on December 22, 2010; he noted that, if Petitioner is no longer in custody, this action may be moot. *See Crawford v. Booker*, 2000 WL 1179782, at *1 (10th Cir. Aug. 21, 2000) (unpublished opinion).

constitute a waiver of his right to appellate review of the factual findings and legal conclusions contained in the Report and Recommendation.

To date, Petitioner has not filed an objection and has not sought an extension of time in which to do so. Accordingly, the Report and Recommendation [Doc. No. 9] is adopted as though fully set forth herein. This action is dismissed without prejudice to its refiling.

IT IS SO ORDERED this 31st day of January, 2011.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE